

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

WALLACE and PHYLLIS
MONTGOMERY,

Plaintiffs,

v.

BERTHA MOORE, et al.,

Defendants.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

) Civil Action No.: 2:06cv880-wkw

NOTICE OF REMOVAL & SUBSTITUTION

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 2679 (d) (2), *Wallace and Phyllis Montgomery v. Bertha Moore, et al.*, Case No. CV 2005-2214 (Circuit Court of Montgomery County, Alabama), is hereby removed to this Court, and the United States is substituted as party defendant for Bertha Moore. In support of this notice, the United States respectfully states as follows:

1. Bertha Moore is a defendant in *Wallace and Phyllis Montgomery v. Bertha Moore, et al.*, Case No. CV 2005-2214 (Circuit Court of Montgomery County, Alabama). The complaint alleges that on August 29, 2003, defendant Moore and plaintiffs were involved in an automobile accident on Interstate Sixty-Five (I-65). Copies of all papers filed in the State court are filed with this Notice as Exhibit 1.

2. Bertha Moore is the executive secretary for Leura G. Canary, United States Attorney for the Middle District of Alabama.

3. Pursuant to 28 U.S.C. § 2679 (d) (2), Phyllis J. Pyles, Director, Torts Branch, Civil Division, United States Department of Justice, has certified that Bertha Moore was acting within the scope of her federal office or employment at the time of the incident out of which plaintiffs' claims arise. *See* 28 C.F.R. § 15.4 (a) (2006) (delegating the Attorney General's certification authority to the Director, Torts Branch, Civil Division, United States Department of Justice). A copy of the Attorney General's scope-of-employment certification is filed with this Notice as Exhibit 2.

4. Removal to this Court has occurred by operation of law based upon the Attorney General's scope-of-employment certification. 28 U.S.C. § 2679 (d)(2). The Attorney General's certification conclusively establishes removal jurisdiction in this Court. 28 U.S.C. § 2679(d)(2); *Gutierrez De Martinez v. Lamagno*, 515 U.S. 417, 431 (1995).

5. Substitution of the United States as party defendant for Bertha Moore has occurred by operation of law, and this action shall proceed as an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346 (b), 2671-2680. 28 U.S.C. § 2679 (d) (2).


WHEREFORE, pursuant to 28 U.S.C. § 2679 (d) (2), *Wallace and Phyllis Montgomery v. Bertha Moore, et al.*, Case No. CV 2005-2214 (Circuit Court of Montgomery County, Alabama)(Shashy, W.) has been removed to this Court, and the United States has been substituted as party defendant for Bertha Moore.

Respectfully submitted this 28th day of September, 2006.

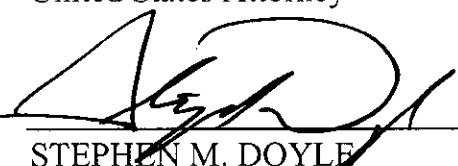
PETER D. KEISLER
Assistant Attorney General
Civil Division

PHYLLIS J. PYLES
Director, Torts Branch
Civil Division

GAIL K. JOHNSON
Trial Attorney, Torts Branch
Civil Division


For CONOR KELLS
Trial Attorney, Torts Branch
Civil Division
U.S. Department of Justice
Benjamin Franklin Station
P.O. Box 888
Washington, D.C. 20044
(202) 616-4273
(202) 616-5200 (FAX)

LEURA G. CANARY
United States Attorney

By: 
STEPHEN M. DOYLE
Chief, Civil Division
Assistant United States Attorney
Post Office Box 197
Montgomery, AL 36101-0197
District of Columbia Bar No. 422474
Telephone No.: (334) 223-7280
Facsimile No.: (334) 223-7418
E-mail: stephen.doyle@usdoj.gov

Attorneys for Defendant
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Notice of Removal and Substitution upon plaintiffs' attorney by mailing a copy of same, first class, postage prepaid, addressed as follows:

J. Callen Sparrow, Esq.
Post Office Box 11310
2224 1st Avenue North
Birmingham, AL 35202

Dated this 28th day of September, 2006.


Assistant United States Attorney

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY ALABAMA

Wallace and Phyllis Montgomery,
Plaintiffs,

v.

Bertha Moore, et. al.,
Defendants.

CV-2005-2214

RECEIVED
2006 AUG 31 P 1:50

JURY TRIAL
SCHEDULING ORDER

It is hereby **ORDERED** that the above matter is set for a **JURY TRIAL** on **02/12/2007** at **9:00 am** in Courtroom **3-C** of the Montgomery County Courthouse.

It is further **ORDERED** as follows:

Counsel for each party shall jointly prepare a pretrial order in substantial compliance with the attached order embracing all matters set out in *Rule 16 ARCP*, and submit it to the Court.

The Parties **SHALL**, within Thirty (30) days, file with this Court cut-off dates, including but not limited to, witness exchange, including the exchange of *Rule 26* information.

DONE and **ORDERED** this *August 30, 2006*.

William A. Shashy

WILLIAM A. SHASHY
Circuit Judge

J. Callen Sparrow
P.O. Box 11310
2224 1st Avenue North
Birmingham, AL 35202

Stephen M. Doyle
P.O. Box 197
Montgomery, AL 36101-0197

DEFENDANT'S EXHIBIT
CASE NO. _____
EXHIBIT NO. <u> / </u>

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

WALLACE MONTGOMERY and
PHYLLIS MONTGOMERY,

Plaintiffs,

v.


BERTHA MOORE,

Defendant.

CASE NO. CV-2005-2214-WAS

NOTICE OF APPEARANCE

COMES NOW, the undersigned attorney, Emily C. Marks, and files this Notice of Appearance as attorney for Bertha Moore in the above case.



EMILY C. MARKS (COO064)
Attorney for Defendant, Bertha Moore

OF COUNSEL:


BALL, BALL, MATTHEWS & NOVAK, P. A.
2000 Interstate Park Drive, Suite 204
Post Office Drawer 2148
Montgomery, Alabama 36102-2148
(334) 387-7680

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon all counsel of record as listed below by placing a copy of said document in the United States Mail, first class, postage prepaid and properly addressed on this September 18, 2006.

Warren M. Parrino, Esq.
Garrison Scott, P.C.
P.O. Box 11310 (35202)
2224 1st Avenue North
Birmingham, AL 35202

Stephen M. Doyle, Esq.
Traci Colquett, Esq.
Civil Division
Assistant U.S. Attorney
P.O. Box 197
Montgomery, AL 36101-0197



OF COUNSEL

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

WALLACE MONTGOMERY, et al.,)

Plaintiffs,)

v.)

BERTHA MOORE, et al.,)

Defendants.)

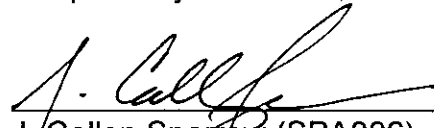
CIVIL ACTION NO.: CV 2005-2214

MOTION TO LIFT STAY

COME NOW the plaintiffs in the above-styled cause, and request this Court to lift the stay and place this case on its active docket. Efforts to resolve the Federal Tort Claim have been unsuccessful.

WHEREFORE, plaintiffs respectfully request this Court to enter an Order placing this case back on its active docket.

Respectfully submitted,



J. Callen Sparrow (SPA006)
Attorney for Plaintiffs

OF COUNSEL:


HENINGER GARRISON DAVIS, LLC
P. O. Box 11310 (35202)
2224 1st Avenue North
Birmingham, AL 35203
Telephone: (205)326-3336
Facsimile: (205)326-3332

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing pleading upon the following parties of record, by placing a copy of same in the United States mail, postage prepaid, on this the 23rd day of August 2006.

Stephen M. Doyle, Esquire
Chief, Civil Division
Assistant United States Attorney
P. O. Box 197
Montgomery, AL 36101-0197
Telephone: (334)223-7280
Facsimile: (334)223-7418

Bertha G. Moore
4731 Queensbury Court
Montgomery, AL 36116


OF COUNSEL

STATE OF ALABAMA

Unified Judicial System

Montgomery County

Revised 2/22/05

Check one (Not for Workers' Comp., PFA, or Small Claims cases):

☐

District Court

☒

Circuit Court

► Case No.

CW 2005-2214

Style of case: Wallace Montgomery, et al.

v.
Bertha Moore, et al.**MOTION COVER SHEET**

Name of Filing Party: Plaintiffs

Name, Address, and Telephone No. of Attorney or Party, if Not Represented:

J. Callen Sparrow, 2224 1st Avenue North, Birmingham, AL 35203

(205)326-3336

Attorney Bar No.: SPA006

To be filled out by Clerk of Court:

☐ Filing Fee Charged and Collected (Amt \$_____)☐ Filing Fee Not Required (SM, Work Comp, PFA)☐ Affidavit of Hardship on File**Type of Motion (Check One)****Motions Requiring Fee**

- ☐ Default Judgment (\$50.00)
- ☐ Intervene or Appear as Third Party Plaintiff – Only in CV cases, excluding DR cases filed on the CV docket (\$297.00)
- ☐ Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- ☐ Judgment on the Pleadings (\$50.00)
- ☐ Motion to Dismiss, or in the Alternative Summary Judgment (\$50.00)
- ☐ Other Dispositive Motion not pursuant to Rule 12(b) (\$50.00)
- ☐ Renewed Dispositive Motion (Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- ☐ Summary Judgment or other Dispositive Motion not pursuant to Rule 12(b) (\$50.00)
- ☐ Other _____ pursuant to Rule _____ (\$50.00)

* Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

☐ Local Court Cost \$_____

Motions Not Requiring Fee

- ☐ Add Party
- ☐ Amend
- ☐ Change of Venue/Transfer
- ☐ Compel
- ☐ Consolidation
- ☐ Continue
- ☐ Deposition
- ☐ Designate a Mediator
- ☐ Judgment as a Matter of Law (during trial)
- ☐ Disburse Funds
- ☐ Discovery
- ☐ Ex Parte Restraining
- ☐ Extension of Time
- ☐ In Limine
- ☐ Joinder
- ☐ More Definite Statement
- ☐ Motion to Dismiss pursuant to Rule 12(b)
- ☐ New Trial
- ☐ Objection of Exemptions Claimed
- ☐ Plaintiff's Motion to Dismiss or Stipulation of Dismissal
- ☐ Preliminary Injunction
- ☐ Protective Order
- ☐ Quash
- ☐ Release from Stay of Execution
- ☐ Sanctions
- ☐ Sever
- ☐ Show Cause
- ☐ Special Practice in Alabama
- ☐ Stay
- ☐ Strike
- ☐ Supplement to Pending Motion
- ☐ Temporary Restraining Order
- ☐ Vacate or Modify
- ☐ Withdraw
- ☒ Other _____ Motion to Life Stay
pursuant to Rule _____ (Subject to filing fee)

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship ☐

Date:

August 23, 2006

Signature of Attorney or Party:



*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

** Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee

✓ 54

**IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA**

WALLACE MONTGOMERY, et al.,)
)
Plaintiffs,)
)
v.)
)
BERTHA MOORE, et al.,)
)
Defendants.)

h

Case No.: CV-05-2214

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2006 JAN -5 PM 3:25

JOINT STATUS REPORT

1. In its Order of October 5, 2005, staying this case, the Court ordered the parties to file a report by this date concerning the status of the Federal Tort Claim.
2. The parties hereby report that plaintiffs and the United States are currently engaged in settlement negotiations pursuant to the administrative claim provision of the Federal Tort Claims Act, 28 U.S.C. §§ 2401 (b), 2672, 2675; 28 C.F.R. §§ 14.1 through 14.11.
3. The parties request that this case remain stayed so that they can continue to pursue these negotiations.
4. I, the undersigned Assistant United States Attorney, do hereby certify that Counsel for plaintiffs, J. Callen Sparrow, Esquire, and I have reviewed and agreed to this joint status report.

Respectfully submitted this 5th day of January 2006.

By: 
For

J. CALLEN SPARROW (SPA006)

Garrison Scott, P.C.

P.O. Box 11310 (35202)

2224 1st Avenue North

Birmingham, AL 35203

Telephone: (205) 326-3336

Facsimile: (205) 326-3332

E-mail: jcsparrow@gsattnys.com

Counsel for Plaintiffs

LEURA G. CANARY

UNITED STATES ATTORNEY

By: 
For

STEPHEN M. DOYLE

Chief, Civil Division

Assistant United States Attorney

D.C. Bar No. 422474

Post Office Box 197

Montgomery, AL 36101-0197

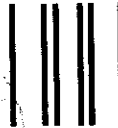
Telephone No.: (334) 223-7280

Facsimile No.: (334) 223-7418

E-mail: stephen.doyle@usdoj.gov

Counsel for Defendant

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Melissa A. Rittenour
Montgomery County Courthouse
P.O. Box 1667
251 S. Lawrence Street
Montgomery, AL 36102-1667

36104+4212

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none">■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.■ Print your name and address on the reverse so that we can return the card to you.■ Attach this card to the back of the mailpiece, or on the front if space permits.		<p>A. Signature) <u>Lee Moore</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Lee Moore</u> C. Date of Delivery <u>9/1/06</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>YES, enter delivery address below: <input type="checkbox"/> No</p> <p><u>CV-05-2214</u></p>	
1. Article Addressed to: <u>Bertha Moore</u> <u>4731 Queensbury Court</u> <u>Montgomery, AL 36116</u>		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from service label)		4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes	
		<u>7004 0750 0000 4785 3808</u> <u>PAR097</u>	

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1035

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY ALABAMA

Wallace and Phyllis Montgomery,)
Plaintiff,)
)
vs.)
)
Bertha Moore, et. al.,)
Defendant.)

CV-2005-2214

2005 OCT 14 PM 2:36

ORDER

It is hereby **ORDERED** that this matter is reset for a **JURY TRIAL** on **9/11/2006** at **9:00AM** in Courtroom **3-C** of the *Montgomery County Courthouse*.

DONE and **ORDERED** this October 14, 2005.

William A. Shashy
WILLIAM A. SHASHY
Circuit Judge

Warren M. Parrino, Esq. ✓
P.O. Box 11310
2224 1st Avenue North
Birmingham, AL 35202

Bertha Moore ✓
4731 Queensbury Court
Montgomery, AL 36116

5

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

WALLACE MONTGOMERY, ET AL.,)

Plaintiffs.)

v.) Case No.: CV-05-2214


BERTHA MOORE, ET AL.,)

Defendants.)

ORDER

It is hereby **ORDERED** that this case is stayed and placed on the administrative docket. Either party may petition the Court for placement on the active docket. The Parties shall file a report by January 5, 2006, concerning the status of the Federal Tort Claim.

DONE and **ORDERED** this the 5 of Oct, 2004.


WILLIAM A. SHASHY
Circuit Judge

J. Callen Sparrow ✓
P.O. Box 11310
2224 1st Ave. North
Birmingham, AL 35203

Bertha G. Moore ✓
4731 Queensbury Court
Montgomery, AL 36116

2005 OCT -5 PM 3:44

GARRISON | SCOTT

W. LEWIS GARRISON, JR. ♦
ROMAINE S. SCOTT, III
J. CALLEN SPARROW
WILLIAM L. BROSS
HONZA J. F. PRCHAL *
BRIAN D. HANCOCK ▲
MARY ELIZABETH MAYS
WARREN M. PARRINO

2224 1ST AVENUE NORTH
BIRMINGHAM, ALABAMA 35203

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TELEPHONE: (205) 326 . 3336
FACSIMILE: (205) 326 . 3332
WATS: (800) 241 . 9779

♦ ALSO ADMITTED IN CA
* ALSO ADMITTED IN MS
▲ ALSO ADMITTED IN TN

October 4, 2005

VIA FACSIMILE AND REGULAR MAIL - (334)832-1323 (Attn: Michael)

The Honorable William Shashy
Montgomery County Courthouse
P. O. Box 1667
Montgomery, AL 36102-1667

Re: *Wallace Montgomery, et al. v. Bertha Moore, et al.*
Civil Action Number: CV 2005-2214

Dear Judge Shashy:

Attached is a Motion for Stay that I am filing the above-referenced case. I have spoken with the U.S. Attorney's office in Montgomery and the lawyer overseeing this in that office agrees with this stay if it is approved by this Court. As a result of the way in which the federal tort claims have been handled, entering the stay will allow us to continue trying to resolve the claims or, if that is unsuccessful, will allow us to go forward with the claims of both plaintiffs in the same lawsuit in federal court.

Thank you for your consideration in this matter and if you would like to discuss this please give me a call.

With kindest regards, I remain,

Sincerely yours,


J. Callen Sparrow

JCS/lcm
Attachment

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

WALLACE MONTGOMERY, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.: CV 2005-2214
)	
BERTHA MOORE, et al.,)	
)	
Defendants.)	

MOTION FOR STAY

COME NOW the plaintiffs in the above-styled cause, and move this Court for an Order staying this case in order to allow the plaintiffs to conclude the administrative process under the Federal Tort Claims Act, and in support thereof, show as follows:

This case involves an automobile accident between the plaintiffs Wallace and Phyllis Montgomery and the defendant Bertha Moore. Upon information and belief, at the time this accident occurred, Ms. Moore was in the line and scope of her employment with the federal government as an employee of the U.S. Attorney's office. A federal tort claim was filed on behalf of Wallace Montgomery more than six months ago. However, injuries to Phyllis Montgomery were unknown until after the filing of that claim. Upon learning of the injuries to Phyllis Montgomery, a federal tort claim was filed on her behalf less than six months ago.

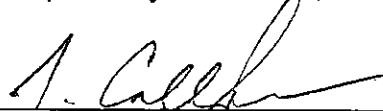
Because of the difference in time-frames, Phyllis Montgomery's federal tort claim is not yet ripe to be litigated in federal court. However, Wallace Montgomery's claim is. Because Ms. Moore was in the line and scope of her employment at the time of the accident, this case will be removed to federal court under the Federal Tort Claims Act.

Upon removal, Phyllis Montgomery's claim will be due to be dismissed in that the requisite time has not yet expired for the administrative handling of her claim.

As a practical matter, these claims may well be resolved at the administrative level given a sufficient amount of time to process them. If stayed, the federal government will not be required or compelled to remove the case. In the event the claims are not resolved at the administrative level, a stay would allow both claims arising from the same automobile accident to go forward simultaneously upon removal to the federal court.

WHEREFORE, plaintiffs respectfully move this Court to enter an Order staying this case until the administrative process relating to Phyllis Montgomery's federal tort claim is completed.

Respectfully submitted,



J. Callen Sparrow (SPA006)
Attorney for Plaintiffs

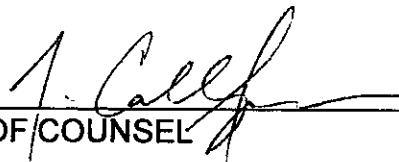
OF COUNSEL:

GARRISON SCOTT, P.C.
P. O. Box 11310 (35202)
2224 1st Avenue North
Birmingham, AL 35203
Telephone: (205)326-3336
Facsimile: (205)326-3332

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing pleading upon the following parties of record, by placing a copy of same in the United States mail, postage prepaid, on this the 4th day of October 2005.

Bertha G. Moore
4731 Queensbury Court
Montgomery, AL 36116



OF/COUNSEL

GARRISON SCOTT, P.C.

2201 1ST AVENUE NORTH
BIRMINGHAM, ALABAMA 35203

Mobile Number
Text Number
Fax Number

TELEPHONE: (205) 255-5555
FACSIMILE: (205) 255-5555
WALK: 1-800-561-9779
<http://www.gscpr.com>

W. LINDA GARRISON, JR.
RONALD E. SCOTT, III
I. CALVIN SPANOW
WILLIAM L. BUDGS
RONALD J. FINEAL
BRIAN D. BEANCOCK
MARY ELIZABETH MAYN
MADISON M. ZABRDO

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Date & Time:	October 4, 2005
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Reference:	Willow Montgomerie, et al. Rutha Doad, et al. PJ 0005-3214
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GARRISON | SCOTT

W. Lewis Garrison, Jr.*
Roderick S. Scott, III
J. Callen Sparrow
William L. Pross
Henry J. Pictel*
Donald Hancock*
Mary Elizabeth Mass
Warren M. Robbins

2294 F. Avenue North
Birmingham, Alabama 35203

MAILING ADDRESS
P.O. Box 130
Birmingham, Alabama 35202

OFFICE TELEPHONE

TELEPHONE: (205) 326-3336
FACSIMILE: (205) 326-3332
MAILS: (800) 241-9779

*30 NORTH AVENUE
*30 NORTH AVENUE
*30 NORTH AVENUE

October 4, 2005

VIA FACSIMILE AND REGULAR MAIL - (334)832-1323 (Attn: Michael)

The Honorable William Shashy
Montgomery County Courthouse
P. O. Box 1667
Montgomery, AL 36102-1667

Re: *Wallace Montgomery, et al. v. Bertha Moore, et al.*
Civil Action Number: CV 2005-2214

Dear Judge Shashy:

Attached is a Motion for Stay that I am filing the above-referenced case. I have spoken with the U.S. Attorney's office in Montgomery and the lawyer overseeing this in that office agrees with this stay if it is approved by this Court. As a result of the way in which the federal tort claims have been handled, entering the stay will allow us to continue trying to resolve the claims or, if that is unsuccessful, will allow us to go forward with the claims of both plaintiffs in the same lawsuit in federal court.

Thank you for your consideration in this matter and if you would like to discuss this please give me a call.

With kindest regards, I remain,

Sincerely yours,


J. Callen Sparrow

JCS/lcm
Attachment

GARRISON SCOTT, PC

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

WALLACE MONTGOMERY, et al.,

Plaintiffs,

v.

BERTHA MOORE, et al.,

Defendants.

CIVIL ACTION NO.: CV 2005-2214

MOTION FOR STAY

COME NOW the plaintiffs in the above-styled cause, and move this Court for an Order staying this case in order to allow the plaintiffs to conclude the administrative process under the Federal Tort Claims Act, and in support thereof, show as follows:

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Because of the difference in time-frames, Phyllis Montgomery's federal tort claim is not yet ripe to be litigated in federal court. However, Wallace Montgomery's claim is. Because Ms. Moore was in the line and scope of her employment at the time of the accident, this case will be removed to federal court under the Federal Tort Claims Act.

Upon removal, Phyllis Montgomery's claim will be due to be dismissed in that the requisite time has not yet expired for the administrative handling of her claim.

As a practical matter, these claims may well be resolved at the administrative level given a sufficient amount of time to process them. If stayed, the federal government will not be required or compelled to remove the case. In the event the claims are not resolved at the administrative level, a stay would allow both claims arising from the same automobile accident to go forward simultaneously upon removal to the federal court.

WHEREFORE, plaintiffs respectfully move this Court to enter an Order staying this case until the administrative process relating to Phyllis Montgomery's federal tort claim is completed.

Respectfully submitted,


J. Cullen Sparrow (SPAD08)
Attorney for Plaintiffs

OF COUNSEL:

GARRISON SCOTT, P.C.
P. O. Box 11310 (35202)
2224 1st Avenue North
Birmingham, AL 35203
Telephone: (205)326-3336
Facsimile: (205)326-3332

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing pleading upon the following parties of record, by placing a copy of same in the United States mail, postage prepaid, on this the 4th day of October 2005.

Bertha G. Moore
4731 Queensbury Court
Montgomery, AL 36116



OF COUNSEL

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

WALLACE MONTGOMERY and,
PHYLLIS MONTGOMERY,

Plaintiffs,

v.

CIVIL ACTION No.: CV- 05 -2214

BERTHA MOORE, A & B, the owner
and operator respectively of the vehicle
that collided with the automobile in which
plaintiffs were riding on the occasion
described in the complaint; C, D & E,
being persons or entities for
whose benefit the trip was being made
by Bertha Moore on the occasion made
the basis of this suit, F, G & H, being
persons or entities responsible for the
care, condition or state of repair of
the motor vehicle operated by Bertha
Moore on the occasion described in the
complaint, all of whose true and correct
names or otherwise unknown to the
plaintiff at this time, but will be added
by amendment when properly
ascertained.

Defendant.

2005 AUG 26 PM 2:27

CLERK
CIRCUIT COURT OF
MONTGOMERY COUNTY

COMPLAINT

Come now the Plaintiffs, Wallace Montgomery and Phyllis Montgomery, and file this complaint against the Defendant, Bertha Moore ("Moore") and Fictitious Defendants A-H ("Defendants") and states as follows:

PARTIES

1. The Plaintiff, Wallace Montgomery, is over the age of nineteen (19) years, and is a resident of Norcross, Georgia.
2. The Plaintiff, Phyllis Montgomery, is over the age of nineteen (19) years, and is a resident of Norcross, Georgia.
3. Defendant Moore is, upon information and belief, a resident of Montgomery County, Alabama and has been for all times mentioned herein.

FACTS

4. On August 29, 2003, Plaintiffs Wallace Montgomery and Phyllis Montgomery (hereinafter referred to as "Plaintiffs"), were traveling in a vehicle on a Interstate Sixty-Five (I-65) near mile marker one hundred and five (105). Plaintiffs aver that on said occasion, defendants Bertha Moore; A & B, the owner and operator, respectively, of the vehicle which collided with the automobile in which plaintiffs were riding on the occasion described in the complaint and C, D & E, entities or persons for whose benefit the trip was being made by Bertha Moore on the occasion made the basis of this suit F, G and H the person, persons and/or entities responsible for the care, condition or state of repair of the vehicle operated by Defendant Moore (all of whose true and correct names are otherwise unknown to the plaintiffs at this time, but will be added by amendment when ascertained) negligently or wantonly injured the plaintiffs by negligently or wantonly causing or allowing the vehicle of which they were in charge or control to collide with the automobile in which plaintiffs were riding, and as a proximate consequence of said negligence or wantonness of said defendants, plaintiffs were caused to suffer the injuries and damages set forth herein.

5. As a proximate consequence thereof, Plaintiff Wallace Montgomery was caused to suffer grievous personal injuries; he was caused to incur significant medical expenses; he was prevented from going about his usual pursuits and duties; the automobile in which Plaintiff was traveling, the property of Plaintiff, was wrecked, damaged, rendered totally inoperable and totally unsalvageable which deprived Plaintiff of the use of said automobile; and Plaintiff has been caused to suffer extreme physical pain and profound mental anguish.

6. As a proximate consequence thereof, Plaintiff Phyllis Montgomery was caused to suffer significant personal injuries; she was caused to incur medical expenses; she was prevented from going about her usual pursuits and duties; and Plaintiff Phyllis Montgomery has been caused to suffer extreme physical pain and profound mental anguish.

7. Plaintiff avers that on said occasion Defendant Moore, and Defendants A and B, being the owner and operator, respectively, of the vehicle which collided with the vehicle in which

Plaintiffs were traveling on the occasion described in the complaint negligently or wantonly injured the Plaintiff by negligently or wantonly causing or allowing the vehicle of which they were in charge or control to collide with the automobile in which Plaintiffs were traveling, and as a proximate consequence of said negligence or wantonness of said Defendants, Plaintiffs were caused to suffer the injuries and damages hereinabove set forth.

8. Plaintiffs aver that on said occasion Defendants Moore and C, D and E the person, persons and/or entities responsible for the care, condition or state of repair of the vehicle operated by Defendant Moore on the occasion described in the complaint negligently or wantonly injured the Plaintiffs by negligently or wantonly causing or allowing the vehicle that was being operated by Defendant Moore on the occasion described in the complaint to be operated on the public highways in a condition not safe for such operation, and as a proximate consequence of said negligence or wantonness of said Defendant, Plaintiffs were injured and damaged as hereinabove set forth.

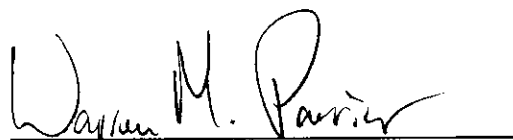
9. Plaintiffs aver that on said occasion Defendants Moore and F, G and H entities or persons for whose benefit the trip was being made by Bertha Moore on the occasion made the basis of this suit described in the complaint negligently or wantonly injured the Plaintiffs by negligently or wantonly causing or allowing the vehicle that was being operated by Defendant Moore on the occasion described in the complaint to be operated on the public highways in a condition not safe for such operation, and as a proximate consequence of said negligence or wantonness of said Defendant, Plaintiffs were injured and damaged as hereinabove set forth.

10. At all times relevant herein, Plaintiff Phyllis Montgomery was the lawful wife of Plaintiff Wallace Montgomery. As a direct and proximate consequence of the negligence of wantonness of the Defendant, Plaintiff Phyllis Montgomery was caused to suffer the loss of the services, society and companionship of her husband Plaintiff Wallace Montgomery.

11. Plaintiffs aver that on said occasion the negligence or wantonness of all defendants combined and concurred and as a proximate consequence of said combined and concurred negligence or wantonness of each defendant, plaintiffs were injured and damaged as hereinabove set

forth.

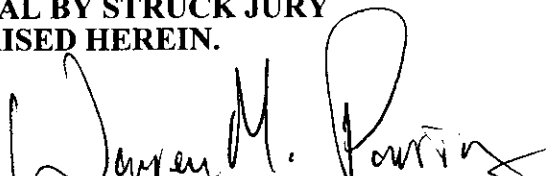
WHEREFORE, Plaintiffs demand judgment against Defendant, in an amount in to be determined by the trier of fact.


Warren M. Parrino, Esq. (PAR097)

OF COUNSEL:

GARRISON SCOTT, P.C.
P. O. Box 11310 (35202)
2224 1st Avenue North
Birmingham, Alabama 35202
Telephone: (205)326-3336
Facsimile: (205)326-3332

**PLAINTIFF DEMANDS TRIAL BY STRUCK JURY
ON ALL ISSUES RAISED HEREIN.**


Warren M. Parrino, Esq. (PAR097)

Serve Defendant:

Bertha G. Moore
4731 Queensbury Court
Montgomery, AL 36116

CV-05-2214

State of Alabama Unified Judicial System Form ARCivP-93 Rev. 5/99	COVER SHEET CIRCUIT COURT - CIVIL CASE (Not For Domestic Relations Cases)	Case Number <div style="border: 1px solid black; padding: 2px;"> CV </div> Date of Filing: Judge Code: Month Day Year
GENERAL INFORMATION		
IN THE CIRCUIT COURT OF <u>MONTGOMERY COUNTY</u> , ALABAMA <div style="text-align: right;">(Name of County)</div>		
<u>WALLACE MONTGOMERY & PHYLLIS MONTGOMERY v. BERTHA MOORE</u>		
<div style="display: flex; justify-content: space-between;"> Plaintiff Defendant </div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> First Plaintiff <input type="checkbox"/> Business <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Government <input type="checkbox"/> Other </div> <div style="width: 45%;"> First Defendant <input type="checkbox"/> Business <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Government <input type="checkbox"/> Other </div> </div>		
NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:		
TORTS: PERSONAL INJURY <input type="checkbox"/> WDEA - Wrongful Death <input type="checkbox"/> TONG - Negligence: General <input checked="" type="checkbox"/> TOMV - Negligence: Motor Vehicle <input type="checkbox"/> TOWA - Wantonness <input type="checkbox"/> TOPL - Product Liability/AEMLD <input type="checkbox"/> TOMM - Malpractice-Medical <input type="checkbox"/> TOLM - Malpractice-Legal <input type="checkbox"/> TOOM - Malpractice-Other <input type="checkbox"/> TBFM - Fraud/Bad Faith/Misrepresentation <input type="checkbox"/> TOXX - Other: _____	OTHER CIVIL FILINGS (cont'd) <input type="checkbox"/> MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve <input type="checkbox"/> CVRT - Civil Rights <input type="checkbox"/> COND - Condemnation/Eminent Domain/Right-of-Way <input type="checkbox"/> CTMP - Contempt of Court <input type="checkbox"/> CONT - Contract/Ejectment/Writ of Seizure <input type="checkbox"/> TOCN - Conversion <input type="checkbox"/> EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction <input type="checkbox"/> Election Contest/Quiet Title/Sale For Division <input type="checkbox"/> CVUD - Eviction Appeal/Unlawful Detainer <input type="checkbox"/> FORJ - Foreign Judgment <input type="checkbox"/> FORF - Fruits of Crime Forfeiture <input type="checkbox"/> MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition <input type="checkbox"/> PFAB - Protection From Abuse <input type="checkbox"/> FELA - Railroad/Seaman (FELA) <input type="checkbox"/> RPRO - Real Property <input type="checkbox"/> WTEG - Will/Trust/Estate/Guardianship/Conservatorship <input type="checkbox"/> COMP - Workers' Compensation <input type="checkbox"/> CVXX - Miscellaneous Circuit Civil Case	
TORTS: PROPERTY INJURY <input type="checkbox"/> TOPE - Personal Property <input type="checkbox"/> TORE - Real Property	OTHER CIVIL FILINGS <input type="checkbox"/> ABAN - Abandoned Automobile <input type="checkbox"/> ACCT - Account & Nonmortgage <input type="checkbox"/> APAA - Administrative Agency Appeal <input type="checkbox"/> ADPA - Administrative Procedure Act <input type="checkbox"/> ANPS - Adults in Need of Protective Services	
ORIGIN (check one): <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> INITIAL FILING <input type="checkbox"/> REMANDED </div> <div> <input type="checkbox"/> APPEAL FROM DISTRICT COURT <input type="checkbox"/> TRANSFERRED FROM OTHER CIRCUIT COURT </div> <div> <input type="checkbox"/> OTHER: _____ </div> </div>		
HAS JURY TRIAL BEEN DEMANDED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <div style="text-align: right; font-size: small;"> Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P., for procedure) </div>		
RELIEF REQUESTED: <input type="checkbox"/> MONETARY AWARD REQUESTED <input checked="" type="checkbox"/> NO MONETARY AWARD REQUESTED		
ATTORNEY CODE: PAR097		
<div style="display: flex; justify-content: space-between;"> <div> Date <u>August 26, 2005</u> </div> <div> Signature of Attorney/Party filing this form </div> </div>		
MEDIATION REQUESTED: <input type="checkbox"/> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> UNDECIDED		

 2005 AUG 26 PM 2:28
 CLERK OF COURT
 JAMES MONTGOMERY

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, ALABAMA

WALLACE MONTGOMERY and,
PHYLLIS MONTGOMERY,

Plaintiffs,

v.

BERTHA MOORE, et al.,
Defendant.

CIVIL ACTION No.: CV- 05 - 2214

SUMMONS

This service by Certified Mail of this Summons is initiated upon the written request of Plaintiff's attorney pursuant to the Alabama Rules of Civil Procedure.

Bertha G. Moore
4731 Queensbury Court
Montgomery, AL 36116

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2005 AUG 26 PM 2:21

NOTICE TO DEFENDANT(S)

The complaint which is attached to this summons is important, and you must take immediate action to protect your rights. You are required to mail or hand deliver a copy of a written Answer, either admitting or denying each allegation in the complaint, to **Warren M. Parrino, GARRISON, SCOTT, P.C., 2224 1st Avenue North, Birmingham, AL 35203**. THE ANSWER MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS AFTER THE SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR YOUR HOME, OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR FOR OTHER THINGS DEMANDED IN THE COMPLAINT. You must file the original of your Answer with the Clerk of this Court within reasonable time afterward.

DATED: 09/04/05


CLERK OF THE COURT

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**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

WALLACE and PHYLLIS
MONTGOMERY,

Plaintiffs,

v.

BERTHA MOORE, et al.,


Defendants.

Civil Action No.: 2:06CV880-WKW

CERTIFICATION OF SCOPE OF EMPLOYMENT

I, Phyllis J. Pyles, Director, Torts Branch, Civil Division, United States Department of Justice, acting pursuant to the provisions of 28 U.S.C. § 2679(d)(1), and by virtue of the authority vested in me by the Appendix to 28 C.F.R. § 15.3 (Civil Division Directive No. 90-79), hereby certify that I have read the Complaint in the above-captioned case. On the basis of the information now available with respect to the allegations contained therein, I hereby certify that Bertha Moore was acting within the scope of her employment as an employee of the United States at the time of the conduct alleged in the Complaint.

Dated this 27th day of September, 2006.


PHYLLIS J. PYLES
Director, Torts Branch
Civil Division

DEFENDANT'S EXHIBIT	
CASE NO.	
EXHIBIT NO.	<u>2</u>